consideration had failed, although fraud could not be predicated upon representations, however false, of a promissory character. *Records v. Smith* (1920, Ind.) 126 N. E. 335.

The general rule appears to be that fraud cannot be predicated on representations of a promissory character, but only on representations of past or present fact. Anson, *Contract* (3d Am. ed. by Corbin, 1919) secs. 222 ff. The same test seems to be applied whether the misrepresentations claimed are set up as a defence to an action for breach of contract, as a ground for rescission in equity, or as a basis of the tort action for deceit. *Keithley v. Mutual Life Ins. Co.* (1916) 271 Ill. 584, 111 N. E. 503 (tort); see *James Music Co. v. Bridge* (1908) 134 Wis. 510, 513, 114 N. W. 1108, 1110 (defence to replevin); *Harris v. Trueblood* (1916) 124 Ark. 308, 186 S. W. 836 (tort). It is said that a promise alone is not, in a legal sense, a representation, and that failure to perform does not make it such. *Brown v. Pierce & Co.* (1918) 229 Mass. 44, 118 N. E. 266 (counts in tort and contract); see *Russ Co. v. Muscupiabe Land Co.* (1898) 120 Calif. 521, 529, 52 Pac. 995, 998 (defence to breach of contract). Some courts say that while a statement of occurrences to happen in the future when stated as a fact may amount to fraud, a promise or expression of intention to do something in the future will not. See *Miller v. Sutliff* (1909) 241 Ill. 521, 526, 89 N. E. 651, 652 (action to rescind); see 2 Pomeroy, *Equity Jurisprudence* (4th ed. 1918) sec. 877. Yet an action for deceit may be had on a promise made at a time when the promisor had put it out of his physical power to perform by contracting with a third party. *Traber v. Hicks* (1895) 131 Mo. 180, 32 S. W. 1145; see COMMENT (1917) 27 YALE LAW JOURNAL, 691; see (1918) 28 *ibid.*, 415. A distinction should be made between a promise which the promisor intends to perform, and one which the promisor at the time of promising intends to break. In the second case there is a fraudulent misrepresentation of present fact. *McLean v. South Western Casualty Ins. Co.* (1916, Okla.) 159 Pac. 660 (rescission); *Cermy v. Paxton & Co.* (1907) 78 Neb. 134, 110 N. W. 882 (tort); see 10 L. R. A. (N. S.) 640, note. *Contra, Farris v. Strong* (1897) 24 Colo. 107, 48 Pac. 963 (rescission); *Ingersoll v. Brown & Co.* (1917) 205 Ill. App. 537 (tort). In the final analysis an intention, although difficult of proof, is an existing fact. *Edginton v. Fitzmaurice* (1884) 29 Ch. Div. 459 (tort); *Adams v. Gillig* (1910) 199 N. Y. 314, 92 N. E. 670 (tort). With the qualification that if an intent not to perform at the time of promising can be proved, it should make out a case of fraud in contract, tort, or equity, the *dictum* of the principal case is sound. For the effect of innocent mispresentation, see COMMENT (1918) 28 YALE LAW JOURNAL, 178.

MARRIAGE AND DIVORCE—ANNULMENT OF MARRIAGE—PARTIES IN PARI DELICTO.—The petitioner sought a decree annulling her marriage to the defendant. At the time of such marriage, as she and the defendant knew, she was the lawful wife of another. *Held,* that the decree of annulment should be granted. *Davis v. Green* (1919, N. J. Eq.) 108 Alt. 772.

There has been a growing doubt as to the wisdom of applying the doctrine of *in pari delicto* universally. In equity exceptions have been made where the courts have felt that public interest or the justice of the case should operate to prevent its enforcement. See (1918) 28 YALE LAW JOURNAL, 699. Thus a deed executed for the purpose of terminating a criminal prosecution has been set aside. *Burton v. MacMillan* (1907) 52 Fla. 469, 42 So. 849; *Tucker v. Cox* (1915) 101 S. C. 473, 86 S. E. 28; *cf. Schroeder v. Turpin* (1913) 253 Mo. 258, 161 S. W. 716. Even at law, in certain cases of illegal contracts, there has been some tendency to allow the plaintiff judgment where his actions do not disclose a high degree of moral turpitude. See (1918) 27 YALE LAW JOURNAL, 1090; see Thurston, *Cases in Quasi Contract* (1916) ch. 3, sec. 2. The general rule has been applied to parties *in pari delicto* seeking the annulment of a marriage. *Rooney v. Rooney*

(1895) 54 N. J. Eq. 231, 34 Atl. 682. The instant case held, however, that vital public interests were involved, that the decree of annulment would establish the status of the parties beyond any doubt, and that if the defendant should remarry, such marriage and the status of children born therefrom would not be subject to question. It is submitted that the court applied the most desirable rule. The courts holding to the contrary admit the invalidity of the second marriage of which annulment is asked, but disregard the obvious public benefits to be gained from having such a fact made a matter of record by judicial decree. Nevertheless, the wife may be held criminally for bigamy. *Cf. Baker v. State* (1920, Fla.) 84 So. 99.

PERSONS—INSANE PERSONS—CONTRACTS—DEEDS.—The guardian of an insane person brought suit to set aside two deeds of certain real estate owned by the ward. The land was conveyed to one Weston, who knew of the mental condition of the grantor, and then the land was attached by the defendant White and a judgment recovered. *Held,* that the deeds should be set aside, even though the defendant was in the position of an innocent purchaser from the grantee. *Brewster v. Weston* (1920, Mass.) 126 N. E. 271.

The issue raised by this case is one concerning which there have been many contradictory decisions. It seems settled that the deed of an adjudged incompetent is absolutely void. *Thorpe v. Hanscom* (1896) 64 Minn. 201, 66 N. W. 1; *Redden v. Baker* (1882) 86 Ind. 191. But some cases go further and hold that, as the lunatic has nothing which the law recognizes as a mind, he is not capable of forming an intent to which the law will give effect; therefore his deeds or contracts are void, even though he had not been adjudged insane at the time of the acts. See *Dexter v. Hall* (1872, U. S.) 15 Wall. 9, 20; *cf. Galloway v. Hendon* (1901) 131 Ala. 280, 31 So. 603. It is suggested, however, that this view is based on a mistaken idea as to the mutual assent necessary for a contract. Actual mental assent is not material, the important thing being what each party is justified in believing from the actions and words of the other. See Corbin, *Offer and Acceptance* (1917) 26 YALE LAW JOURNAL, 169, 205. Therefore the weight of authority holds that the deed of an insane person is not void, but merely voidable. *Arnett's Committee v. Owens* (1901) 23 Ky. L. Rep. 1409, 65 S. W. 151; *Aetna Life Ins. Co. v. Sellers* (1900) 154 Ind. 370, 56 N. E. 97. And where a contract has been made and executed in good faith without knowledge of the insanity (or of circumstances, such as office found, which have the same effect as knowledge) the incompetent is under a disability to avoid the contract unless the other party be put in *statu quo*. *Morris v. Great Northern Ry.* (1896) 67 Minn. 74, 69 N. W. 628; *Loman v. Paullin* (1915, Okla.) 152 Pac. 73. In this way the court succeeds in sufficiently protecting two innocent parties, and avoids the extreme view that even where the grantor has offered to return the consideration, the contract cannot be avoided, where there was no knowledge of the insanity on the part of the grantee. See *Bevins v. Lowe* (1914) 159 Ky. 439, 443, 167 S. W. 422; *cf. Rhoades v. Fuller* (1897) 139 Mo. 179, 40 S. W. 760; see 1 Williston, *Contracts* (1920) sec. 249 ff.

PROPERTY—FIXTURES—EFFECT OF NEW LEASE ON PRIVILEGE AND POWER OF REMOVAL.—In 1857 the plaintiff leased to the defendant a plot of land, on which the defendant erected a sulphuric acid plant. In 1868 and again in 1912 the defendant took a new lease. On vacating the premises at the expiration of this third lease the defendant removed certain portions of the chemical plant. The plaintiff brought an action for a breach of the defendant's covenant to deliver up the premises in good repair. *Held,* that the plaintiff should recover, as the parts of the plant removed were a part of the realty and were not tenant's